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November 30, 2018

PRESS RELEASE

I am announcing today that there will be no criminal charges filed against any of the officers who were involved in the officer involved shooting on November 3, 2018 that caused the death of Robert Charles Foster.

Attached to this press release is a written summary of my review of the case along with the conclusions and findings I have made regarding this unfortunate incident.

It is my judgment that the death of Mr. Foster is a justifiable homicide.

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November 29, 2018

To: MEMO TO FILE

By: R. Paul Frasier

Re: **DEATH OF ROBERT CHARLES FOSTER**

On November 3, 2018, Robert Charles Foster, fired a shotgun in the direction of police officers present at a scene in a field behind the Faith Baptist Church in Bandon, Oregon. Six police officers immediately returned fire at Mr. Foster. Mr. Foster was struck by multiple bullets and died at the scene.

It is my judgment, after having reviewed this matter, which included my being present for detailed interviews with all six officers who used force in this case, that the use of force by the officers was justified under Oregon law. I further find that Mr. Foster was suicidal at that time and acted in a manner that forced the officers to use deadly physical force. In other words, Mr. Foster acted in such a manner that he in essence committed "suicide by cop".

I will explain my reasoning below.

1. Background of Mr. Foster

Mr. Foster's adult criminal history indicates that in 1972 he was convicted in California of the felony of Grand Theft from a Person and was given two years probation. In 1978, he was convicted in California of four counts of false imprisonment

and was sentenced to six years and four months in prison. In 1984, Mr. Foster was convicted of Robbery and Assault with a Deadly Weapon and was sentenced to fifteen years in prison.

While not clear, it appears that Mr. Foster moved to Oregon in 1995. He has no criminal record in Oregon.

Mr. Foster had mental and emotional issues, along with suicidal ideation, for many years. One of the documents I examined in this case was a pre-sentence report done by the California Courts for the false imprisonment case in 1978. In that case, Mr. Foster took two hostages inside a bank and fired multiple shotgun rounds while inside. In that report, Mr. Foster's background was described. Mr. Foster reported he was first ordered by the juvenile courts to begin psychiatric treatment at age thirteen. Mr. Foster reported that when he was fourteen he began to have suicidal ideation and tried to commit suicide at that age. The report makes mention of extensive psychiatric records dating back to 1968 detailing serious emotional problems. In 1973, Mr. Foster was committed to a state psychiatric hospital in California for a period of nine months.

As to the hostage incident in 1978 that brought him before the court, the ex-wife of the defendant worked in a bank. According to the report, Mr. Foster had been served with a domestic violence restraining order preventing him from having contact with his ex-wife. He also claimed he was denied visitation with his two children. Mr. Foster told the police that he went to the bank with the intent of putting the shotgun in his mouth and "blowing his brains out" in front of his ex-wife. Police negotiators were able to talk Mr. Foster into surrendering. While in custody pending resolution of the case, Mr. Foster attempted suicide on three different occasions.

Mr. Foster had been a client of the mental health division of Coos County Health and Wellness for some time and I have reviewed records from Coos Health and Wellness that begin in July of 2017. Between July of 2017 and November 3, 2018, mental health had numerous contacts with Mr. Foster. On multiple occasions Mr. Foster threatened suicide and was offered services. Mr. Foster was also taken to the hospital by mental health workers on several occasions. Mr. Foster failed to follow through with the services offered.

One thing that needs to be clear is that the laws allowing a hospital to involuntarily hold an individual because of the person's mental health are very strict. For example, police officers can take an individual to an appropriate hospital against their will on a police officer's mental hold. When the person arrives at the hospital they are given a mental health evaluation. Before the hospital can continue to hold an individual against their will, there must be a showing that the person at the time of the evaluation is currently a danger to themselves or others. What happens in some cases is that an individual who is threatening suicide is brought to the hospital by the police or a mental health worker on an involuntary basis. To continue to involuntarily hold the individual, the hospital has to do an evaluation shortly after the person arrives at the hospital. When the evaluator meets with that individual, the evaluator will ask questions to determine if the person at the time of the evaluation is suicidal. If the person tells the evaluator at the time of the interview that the person is not suicidal, under the law, the hospital can no longer hold the person against the person's will.

In the weeks preceding November 3, 2018, Mr. Foster's behavior began to escalate. On October 11, 2018, Mr. Foster went to the Coquille River Bridge with the

apparent intent of committing suicide. Mr. Foster tied a rope around his neck and tied it to the bridge. Before he could jump off the bridge, Chief Bob Webb of the Bandon Police Department and Deputy Holder of the Coos County Sheriff's, were able to tackle Mr. Foster. He was then transported to Bay Area Hospital on a police officer's mental hold. At the time he was evaluated at the hospital, Mr. Foster told the evaluator he was no longer suicidal. Consequently he was released from the hospital.

On October 30, 2018, Mr. Foster was taken to Bay Area Hospital on two occasions because of his mental health. At approximately 1:42 PM he was taken to the hospital because mental health workers became aware that he was threatening suicide. He apparently had been asking others for a gun to shoot himself. He was evaluated at the hospital and Mr. Foster indicated he was not then suicidal. The hospital then released him.

Later in the day, Mr. Foster was again taken to Bay Area Hospital by Coos Bay Police. At that time Mr. Foster was threatening to kill himself by jumping off a pier into the bay. Once again Mr. Foster denied he was currently suicidal at the hospital and he was released.

On October 27, 2018, Mr. Foster presented himself on his own on two different occasions to Southern Coos Hospital and Health Center in Bandon. This hospital does not have mental health facilities and has no ability to hold a mentally ill person on an involuntarily basis. On both occasions Mr. Foster was agitated and combative and was seeking pain medication. During one of these encounters, a physician at the hospital heard Mr. Foster state that if he did not get pain medication that he "would shoot himself in the head or have a gunfight with police" with the same effect.

2. November 3, 2018

Mr. Foster planned a confrontation with the police. As explained below, the evidence shows that Mr. Foster intended to get into a confrontation with the objective of forcing the police to kill him.

In preparation for this confrontation, Mr. Foster placed in the back of pickup truck a full propane gas tank (three gallon). He also placed in the back of the truck several plastic milk jugs which had gasoline inside them. He also placed an oxygen tank in the back of the truck. The propane tank and the oxygen tank were put inside a plastic trash can. The milk jugs were placed near the trash can and had wrapped around the milk jugs a small diameter rope which from a distance appeared to possibly be some sort of detonation cord. Mr. Foster armed himself with a 12 gauge shotgun and a .38 caliber pistol. He then drove to the field behind the Faith Baptist Church and parked in the middle of the field. He parked in a location where there was no possible cover for a police officer to approach the truck without being seen. This would prevent a police officer from "sneaking up" on the truck and possibly use less than lethal force to take him into custody. Once he was situated, at about 11:30 AM., Mr. Foster called 911 and indicated he had an explosive device and that he was going to explode it. A Bandon Police Officer and a Sheriff's Deputy responded.

Upon arrival they saw that Mr. Foster was armed with a shotgun and was threatening to kill himself or that he would shoot the officers. The officers called for backup and in response a large number of officers from multiple departments responded. Assistance was requested from the Coos County Emergency Response

Team and several members of that team responded to Bandon. The Sheriff's Office sent a trained negotiator to the scene to talk with Mr. Foster.

When the police initially arrived on the scene, Mr. Foster was outside the vehicle. He subsequently got inside of the pickup and stayed there until just before the incident ended.

As part of the response to this situation, two different drones were used to overfly the pickup. Pictures from the drones showed the milk jugs and the plastic trash can. An independent witness who had contact with Mr. Foster earlier that day saw that Mr. Foster had placed the oxygen tank and the propane tank inside the trash can. Based upon what the pictures showed, the officers had to take seriously the threat that Mr. Foster had an explosive device in the pickup. The drone pictures also showed Mr. Foster holding the .38 caliber handgun and the shotgun.

The negotiator initially established contact with Mr. Foster by cell phone. Mr. Foster eventually ended those conversations by terminating the cell phone call and by refusing to answer the phone. The negotiator then moved to a police car and by loudspeaker attempted to get Mr. Foster to put down his weapons and surrender to police. Mr. Foster refused to do so. Several hours were spent by negotiators telling Mr. Foster that the police were there to help him and repeatedly asked Mr. Foster to put down his weapons and peacefully surrender. Mr. Foster refused to cooperate.

Sometime around 3:30 PM, Mr. Foster exited the pickup truck armed with the shotgun. The negotiator gave numerous commands to Mr. Foster to put down the gun. Mr. Foster refused to do so. Mr. Foster walked to the rear of the truck and appeared to be doing something with the items in the back. The police could not tell exactly what Mr.

Foster was doing but there was a fear that he might be trying to explode the items in the rear of the truck. Mr. Foster then walked to the driver's side of the truck and pointed his shotgun into the rear of the truck. Again, the officers did not know exactly what Mr. Foster was trying to do, but there was a fear he was going to explode the materials in the back of the truck. The negotiator continues to give Mr. Foster commands to drop the weapon and surrender.

Mr. Foster then took the shotgun, shouldered it and pointed it at the officers on the east side of the field. He then fired one round from the shotgun in the direction of the officers. At that point six officers returned fire. Multiple rounds (approximately 30) were fired. The whole incident from when Mr. Foster fires his weapon until the officers cease returning fire is between four and five seconds.

The officers who returned fire are:

1. Detective Ryan Doyle, North Bend Police Department;
2. Officer Justin Gray, Coquille Police Department;
3. Deputy Theron Coleman, Coos County Sheriff's Office;
- 4, Deputy Aaron Whittenberg, Coos County Sheriff's Office;
5. Trooper Ben Cordes, Oregon State Police; and
6. Trooper Shaelon Ross, Oregon State Police.

Officers then approached Mr. Foster along with paramedics on scene. They immediately attempted to render aid to Mr. Foster. Mr. Foster was declared deceased.

The evidence suggests that Mr. Foster was trying to cause the police to believe he was going to set off the explosive device in the pickup in hopes the police would

shoot him before he could do so. The police did not do so. When that did not work, Mr. Foster then pointed the shotgun at the officers and fired one round.

Mr. Foster was hit in the right shoulder and right leg. These shots spun him to the right where he was hit in the left side of the back which passed through his right lung. Another bullet hit Mr. Foster in the left pelvic region. He also had two graze wounds, one on each hand.

Most of the bullets passed through Mr. Foster and were not recovered. The bullet that hit him in the right lung disintegrated and no fragments usable for ballistic testing were recovered from his body. The right lung injury was the fatal injury. Because of the lack of forensic evidence it is not possible to determine which officer fired the fatal shot.

The shotgun was recovered at the scene and had an expended round in the chamber. The .38 caliber handgun was found on Mr. Foster's person. The handgun was loaded and Mr. Foster had multiple rounds for the handgun on his person. The items in the back of the truck were examined and it was determined that there was not any type of a detonator in the back of the truck that could have exploded the gasoline, the propane tank or the oxygen tank. Mr. Foster did go through efforts to make it appear that he had rigged some sort a detonator to explode those items.

All six officers who fired their weapons were interviewed. All six of the officers saw Mr. Foster shoulder the shotgun and point it at the officers. Five of the officers who fired saw Mr. Foster fire one round at the officers. All other police officers/witnesses present confirm that Mr. Foster pointed the shotgun at the officers and fired one round. Everyone was in agreement that they believed they were in danger of being killed by Mr. Foster necessitating action to defend themselves or others then present.

3. The Law

Under Oregon law, a person is justified in using physical force on another person to defend himself or others then present from what that person reasonably believes to be the use or imminent use of unlawful physical force. In defending, a person may only use that degree of force which the person reasonably believes to be necessary. See, ORS 161.209.

Deadly physical force can only be used in certain circumstances. Under ORS 161.219 there are certain limitations on the use of deadly physical force. The law allows a person to use deadly physical force when that person reasonably believes that the aggressor is using or about to use unlawful deadly physical force against the person or another person then present.

4. Analysis

The evidence shows that Mr. Foster wanted to commit suicide. To accomplish that goal, Mr. Foster decided that he would have a confrontation with the police with the intent to force the police to kill him.

The evidence is unequivocal that Mr. Foster pointed a loaded shotgun and fired one round at the officers trying to help him. Any reasonable person in the same circumstances would have believed that the person's life or the lives of other persons then present were in danger. The officers' actions in returning fire were justified under the law.

As a result, none of the six officers who returned fire at Mr. Foster will be charged with any crime.